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VENABLE LLP
P.O. BOX 34385
WASHINGTON, DC 20043-9998

EXAMINER

KAUFMAN, JOSEPH A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/662,878
Filing Date: September 16, 2003
Appellant(s): CARGILE ET AL.

MAILED
APR 11 2007
GROUP 3700

Kavita B. Lepping and Stuart I. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 27, 2006 appealing from the Office action mailed January 31, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,633,270	YOUNG	3-1953
1,884,543	BOLZ	10-1932

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claims 1-22 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the seal formed solely by the main body is not supported by the original disclosure and thus constitutes new matter.

Claim Rejections - 35 USC § 102/103

Claims 1-8 and 18-21 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Young.

Young shows a main body 32; ends at 31 and 34; opening/outlet 34; seal 31; U-shaped contour having bearing surfaces comprising continuous first and second planar, thickened portions perpendicular to the longitudinal and transverse directions of the main body as seen in Figures 7 and 10; wrapping tool 15-30; contour receiver seen in Figures 4 and 10; slot 26; open end 24, 25 that are not joined as noted in column 3, lines 20-25; and the slot engages the bearing surfaces of the contour as seen in Figure 10. Note, the method of forming the seal solely by the main body is a product by process limitation. Further, this limitation is not discussed as noted above and thus is not given criticality. However, it would have been obvious to one of ordinary skill in the

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art to make the seal formed solely by the main body in order to form a more permanent bond and thus, lower the risk of detachment of the seal from the body.

Claims 1, 10-17 and 22 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolz.

Bolz shows a main body 1; first and second ends 2, 21; opening/outlet 2; seal 13; U-shaped, discontinuous contour 13 seen in Figures 1 and 5 having opposed thickened portions perpendicular to the longitudinal and transverse directions of the body as seen in Figures 1 and 5; bearing surfaces as hole 16 and seen in the drawing figures; wrapping tool 20 having a contour receiver; and the cross-shape of the contour is seen in Figure 2. Note, the method of forming the seal solely by the main body is a product by process limitation. Further, this limitation is not discussed as noted above and thus is not given criticality. However, it would have been obvious to one of ordinary skill in the art to make the seal formed solely by the main body in order to form a more permanent bond and thus, lower the risk of detachment of the seal from the body.

(10) Response to Argument

Appellant contends that the seal formed only by the main body is supported by the disclosure of appellant. There is nothing in the drawings that would preclude other possibilities for forming the seal and therefore, the new matter rejection stands. The specification does not discuss how the seal is formed and the drawings are not specific enough to preclude other possibilities as previously stated. Further, appellant's contention that the seal can be made only by heat treatment or crimping has no basis of support in the disclosure. The examiner finds no basis that the seal is inherently formed

solely by the main body and, therefore; one of ordinary skill in the art could not reasonably conclude that the limitation has support in the original disclosure.

Appellant contends that the seal being formed by the main body is not a product-by-process limitation. As the structure is defined by how it is made, i.e. formed by the main body, it is a product-by-process limitation. Therefore, as the seal is structurally the same as the seal of Young or Bolz, both Young and Bolz meet the claimed limitation. With regard to the argument that Young and Bolz are silent as to the motivation, implicit motivation has been provided by the examiner as noted above and has not been addressed by the applicant. The mere fact that Young and Bolz show another type of seal does not mean that the references teach away or would be destroyed if modified. Substituting one type of seal for another is well known and the motivation provided is reasonable and clear.

Finally, the U-shaped trough and the thickened portion of the seal have been discussed above and are shown by both Young and Bolz. Appellant has not explained how the structures discussed above do not meet the claimed limitations.

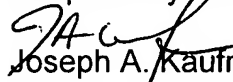
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Joseph A. Kaufman
Primary Examiner
Art Unit 3754

Conferees:

Eric Keasel



Kevin Shaver

